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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,022	12/26/2001	Michael Roberts	00216-368004	2417

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EXAMINER

SPISICH, MARK

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/036,022

Applicant(s)

ROBERTS ET AL.

Examiner

Mark Spisich

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1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 May 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 52-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 52-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 13.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Terminal Disclaimer***

1. The terminal disclaimer filed on 14 May 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of USP 6,151,745 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Notice of Informal Examiner's Amendment***

"Surface" (2<sup>nd</sup>) (claim 55, line 2) deleted and replaced with -- edge --.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coney et al (USP 1,924,152) in view of Michaels (USP 5,040,260). The patent to Coney discloses an oral brush comprising a handle (A), head portion (B) and a brush portion comprising (a) a pair of single rows (D,E) of elastomeric bristles (3) extending from the head portion; and (b) a plurality of non-elastomeric bristles (C) extending from the head portion. The patent to Coney discloses the invention substantially as claimed with the exception of the specific material of the elastomer. The patent to Michaels discloses an oral brush with a brush portion comprising a plurality of elastomeric bristles/projections (10,12) of SANTOPRENE (see column 5, line 2), which is the

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preferred "polyolefin elastomer" of the present application (see page 7, line 3). It would have been obvious to one of ordinary skill to have modified the rubber bristles of Coney as taught by Michaels for the reasons set forth in Michaels. Given the disclosure of the preferred material as well as its use in an oral environment, any differences in the material properties (if any) would be obvious to one having ordinary skill in the art as optimization of a prior art device does not constitute a patentable step.

4. Claims 52-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavone et al (USP 5,325,560) in view of Modic (USP 5,723,543). The patent to Pavone discloses an oral brush (10) comprising a handle (13), head portion (15) comprising at least one elastomeric element (the two opposed sides of the bumper 38 constitute a pair of elastomeric elements along a longitudinal outer edge of the head portion:claims 53-54) as well as a plurality of non-elastomeric bristles (16). The patent to Pavone discloses the invention substantially as claimed with the exception of the specific elastomer. The patent to Modic discloses an elastomeric styrenic block copolymer which may, among other things, be used to constitute a portion of a toothbrush body (see column 4, line 27). It would have been obvious to one of ordinary skill to have modified the device of Pavone as such as the material of Modic is well suited to overmolding, which is a well known method of making dual-material toothbrush bodies. With regard to the material properties, they could be arrived at by one of ordinary skill through routine experimentation. The "bumper" material could be brought into contact with the interdental space and thus it extends a "sufficient distance" from the head portion to do so.

***Response to Arguments***

5. Applicant's arguments with respect to claims 55 and 56 have been considered but are moot in view of the new ground(s) of rejection. The only argument made with regard to claim 55 pertained to the "single row". The patent to Coney et al (USP 1,924,152) discloses such an arrangement of elastomeric and non-elastomeric bristles on an oral brush.

6. Applicant's arguments filed 14 May 2003 have been fully considered but they are not persuasive. The bumper (38) of Pavone (USP 5,325,560) COULD be brought into contact with the teeth and gums. The claim (namely claim 52) does not define the "element" as a bristle. The language added to claim 52 does not structurally define over the prior art in that the bumper (38) of Pavone is capable of being brought into contact with the teeth and gums. The claims do not structurally define the "element" either as a bristle or in a manner which is structurally different than a mere bumper.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (703) 308-1271. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Mark Spisich  
Primary Examiner  
Art Unit 1744

MS  
June 17, 2003